

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WISCONSIN

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DIRECTV, LLC, a California limited liability  
company,

Plaintiff,

-against-

WAYNE GARSKI, Individually, and as  
officer, director, shareholder and/or principal  
of TOMEKS TAVERN LLC, d/b/a  
TOMEK'S TAVERN,

and

TOMEKS TAVERN LLC, d/b/a TOMEK'S  
TAVERN,

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Defendants.

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**MOTION TO APPEAR BY TELEPHONE**  
**AT DEFAULT HEARING**

Civil Action No. 3:12-CV-00790-SLC

Come now plaintiff, DIRECTV, LLC, through counsel, and move this Court for an Order granting Plaintiff's Counsel permission to appear by telephone at the Conference scheduled for March 27, 2013, at 8:30 AM Central Time.

Plaintiff respectfully moves this Court for an Order allowing Plaintiff's Counsel, Dawn M. Conklin, Esq., to participate in the Conference via telephone in an effort to reduce attorney costs and fees.

The Plaintiff's complaint sets forth causes of action under the Federal Communications Act, and the Federal Communications Act is a fee-shifting statute which provides that full costs, including attorney fees, shall be awarded to an aggrieved party who prevails. Any person aggrieved by a violation of 47 U.S.C. § 605(a) has a private right of action enforceable in federal court. See 47 U.S.C. § 605(d)(6). Plaintiff, DIRECTV, LLC, is an aggrieved party in this case because it had a

proprietary interest in the intercepted communications and it was damaged by the unauthorized use of its signals. See Kingvision Pay-Per-View LTD. v. Spice Restaurant & Lounge Inc. et al., 244 F. Supp. 2d 1173; 2003 U.S. Dist. LEXIS 2164 (D. KS, Jan. 21, 2003); Kingvision Pay-Per-View LTD v. Gutierrez et al., 544 F. Supp. 2d 1179; 2008 U.S. Dist. LEXIS 54173 (D. CO., February 12, 2008); DirecTV v. Randy Barrow, 2005 U.S. Dist. LEXIS 1328 (N.D. Ill. Jan. 2005); National Satellite Sports, Inc. v. Marzullo, et al., 1998 U.S. Dist. LEXIS 12931 (N.D. Ill. August 1998).

It is proper to calculate attorneys' fees by "multiplying the number of hours reasonably expended on the litigation times a reasonably hourly rate." Comcast of Illinois X, LLC v. Toguchi, et al., 2008 U.S. Dist. LEXIS 9781 (NDIL, February 11, 2008) citing Dunning v. Simmons Airlines, Inc., 62 F.3d 863, 872 (7<sup>th</sup> Cir. 1995). A reasonable hourly rate can be deduced by looking at the market rate. Comcast of Illinois X, LLC v. Toguchi, et al., 2008 U.S. Dist. LEXIS 9781 (NDIL, February 11, 2008) citing People Who Care v. Rockford Bd. Of Educ., 90 F.3d 1307, 1310 (7<sup>th</sup> Cir. 1996).

In this District, Senior Judge Barbara B. Crabb awarded attorneys' fees in a similar matter in the amount of \$200 per hour for services completed by counsel in a case of this nature and \$75 per hour for a paralegal's services in connection with work performed in a case of this nature. See Zuffa LLC d/b/a The Ultimate Fighting Championship (UFC) v. Zweifel, et al., 3:10-cv-00620-bbc (WDWI, March 23, 2011) document number 24.

In Order for Plaintiff's Counsel to attend the Conference on March 27, 2013, she must travel to Wisconsin from New York, which would require airfare and lodging and result in incurrence of fees and costs which would be shifted to the Defendants if Plaintiff prevails. Plaintiff respectfully requests to appear by telephone at the upcoming conference on March 27, 2013 in order to reduce Plaintiff's costs and fees that will be incurred by traveling to Wisconsin to appear at the Default

Hearing in person.

In the event that this Honorable Court grants the Plaintiff's request, Plaintiff would initiate the Conference call at the appointed time.

Attached hereto is a proposed order for the Court setting forth the proposed relief requested herein.

WHEREFORE, the Plaintiff respectfully requests that this Court grant the motion, and allow Plaintiff to participate in the March 27, 2013, Default Hearing by telephone.

Dated: March 12, 2013  
Ellenville, NY 12428

DIRECTV, LLC

By: /s/ Dawn M. Conlkin  
DAWN M. CONLKIN, ESQ.  
Attorney for Plaintiff  
LONSTEIN LAW OFFICE, P.C.  
80 North Main Street : P.O. Box 351  
Ellenville, NY 12428  
Telephone: (845) 647-8500  
Facsimile: (845) 647-6277  
Email: Legal@signallaw.com  
*Our File No. ES11-15WI-W02A*

**CERTIFICATE OF SERVICE**

Your deponent hereby certifies that I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and that a true copy of the foregoing document was served via U.S. Postal Service on March 12, 2013, upon the following:

Wayne Garski  
3168 State Highway 66  
Rosholt, WI 54473

Tomeks Tavern LLC, d/b/a Tomek's Tavern  
Attn: Wayne Garski, Registered Agent  
3168 State Highway 66  
Rosholt, WI 54473

By: /s/ Dawn M. Conlkin  
DAWN M. CONLKIN, ESQ.